

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and
Revise the Regulation of
Telecommunications Utilities.

R.05-04-005
(Filed April 7, 2005)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON PROPOSED DECISION REGARDING MONITORING REPORTS, RETAIL
SPECIAL ACCESS PRICING AND CUSTOMER DISCLOSURE RULES**

HIEN VO
Staff Counsel

Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue, Room 5135
San Francisco, CA 94102
Phone: (415) 703-3651
Fax: (415) 703-4465
hcv@cpuc.ca.gov

DALE PIIRU
Project Coordinator

Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1726
Fax: (415) 703-1673
dgp@cpuc.ca.gov

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SUMMARY OF RECOMMENDED CHANGES

- The Commission should adopt DRA's monitoring proposals set forth in our February 2007 proposal and as modified by DRA's Opening and Reply Comments, filed March 2, 2007 and March 30, 2007, respectively.
- To avoid further undermining of the Commission's reliance on the FCC ARMIS reports, the final decision in this proceeding should clarify that carriers shall file the ten ARMIS reports with the Commission regardless of the outcomes with the pending FCC petitions. In other words, even if ILECs are freed from the responsibility to provide data to the FCC, the ILECs would be required to report to the CPUC the same data that would have appeared on the California-relevant portion of their ARMIS reports (which would include national or regional data if there is no California-specific reporting on a particular item in the current ARMIS report).
- The Commission should also retain the Field Research Affordability Study, with the modifications that DRA proposed.
- The Commission should monitor rate changes for services that are included in the typical customer bill (*i.e.*, services to which a simple majority of residential and/or small business customers subscribe) to ensure that phone service is reasonably priced. Without a summary of these important rate changes it would be nearly impossible for the Commission or its staff to monitor these changes given the multitude of other rate changes for those services that could occur.
- The Commission should delete footnote 42 to avoid any potentially erroneous implications limiting the Commission's jurisdiction.

I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the “CPUC” or “Commission”), the Division of Ratepayer Advocates (“DRA”) respectfully submits these comments in response to the July 1, 2008 Proposed Decision (“PD”) on the remaining issues in Phase II of the Uniform Regulatory Framework (“URF”) proceeding – monitoring reports, retail special access pricing, and customer disclosure rules.

The PD proposes to close the URF proceeding and adopt no further requirements than those contemplated in its *Phase I URF decision*, D.06-08-030. Specifically, the PD: (1) declines to impose any new state-specific monitoring reports even as necessary after the Commission eliminated monitoring reports required under the previous New Regulatory Framework (“NRF”), (2) declines to change the Commission’s pricing regulations for retail special access services; and (3) declines to add additional customer disclosure requirements on the basis that the “Commission adopted a comprehensive consumer protection regime in D.06-06-013.”¹

DRA’s comments address the errors found in the PD’s conclusions that no additional monitoring reports should be required of URF carriers and that no further customer disclosure rules are necessary at this time. As discussed below, the PD’s conclusions are legally erroneous and an abuse of discretion because findings used to support these conclusions are not based on record evidence and depart from the Commission’s stated policy of vigilant monitoring of the voice communications marketplace. While DRA is not commenting on every issue presented in the PD, silence on a particular issue should not be construed as assent.

II. DISCUSSION

In the *Phase I URF decision* (D.06-08-030), the Commission relinquished significant regulatory oversight over California’s four largest incumbent local exchange carriers (ILECs) by “granting carriers broad pricing freedoms concerning almost all telecommunications services, new telecommunications products, bundles of services, promotion, and contracts.”² The Commission also relieved ILECs of significant reporting duties by eliminating all NRF-specific monitoring reports, which contained data related to the ILECs’ intrastate operations. In place of

¹ PD at 33, Finding of Fact (“FOF”)10.

² PD at 5 (footnote omitted).

price controls and monitoring, the Commission concluded that the “competitive market” would satisfy the Commission’s obligation to ensure that rates are “just and reasonable” for California consumers.

Having made this decision, the PD declines to require the state-specific data that would be necessary to measure the effects and the effectiveness of competition in California. Instead, the Commission chose to rely upon the accounting practices and federal reporting requirements of the Federal Communications Commission (“FCC”). The benefits gained by URF carriers are numerous. For consumers, however, any benefits remain to be seen.

Not even two years after the *Phase I URF decision*, the promises of “innovative products at attractive prices” have remained unfulfilled. Instead, consumers have seen a drastic *increase* in prices for existing services like caller ID, call waiting, and inside wire maintenance, sometimes 200-300 % higher than what they were pre-URF.³ Significantly, these ancillary services are often bundled with basic telephone service.⁴ The Commission, in comments to the FCC, noticed these price increases as early as September 2007. The Commission informed the FCC that in February and July of 2007 “AT&T raised its prices for many services including various associated basic services, basic business, and customer calling features by a range of fifty to several hundred percent.”⁵ Additionally, in a recent proposed decision regarding California’s High Cost Fund-B program, the PD relies upon the fact that AT&T has increased rates for many unregulated features as a basis to reject requests to increase basic service by as much as \$6.05.⁶

The Commission predicated its new URF regime on the economic theory that the “rates and range of services that result from a competitive market likely will be better than those that a

³ WC Docket No. 07-139, *In the matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission’s ARMIS Reporting Requirements*, Reply Comments of the California Public Utilities Commission and the People of the State of California, filed September 17, 2007, at 3 (footnote omitted).

⁴ See D.08-04-057.

⁵ WC Docket No. 07-139, *In the matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission’s ARMIS Reporting Requirements*, Reply Comments of the California Public Utilities Commission and the People of the State of California, filed September 17, 2007, at 3 (footnote omitted).

⁶ R.06-06-028, *Proposed Decision of Commissioner Chong, Decision Adopting Phased Transition Plan For Pricing Basic Telephone Service*, dated July 1, 2008, at 29.

regulated market would produce.”⁷ In this instance, however, “competition” has produced precisely the opposite effect. The fact that URF has not produced the desired results only underscores how fundamentally important it is for the Commission to require robust monitoring of utility activities. The market failure also illustrates the inadequacy of the *Phase I URF decision*’s monitoring metrics, which Commissioner Grueneich recognized as failing “to include even the most basic monitoring, reporting, and audit commitments.”⁸ To honestly assess the marketplace, the Commission must retain the ability to obtain accurate California-specific data regarding competition, service affordability, and service availability, none of which can be found in the FCC’s reports.⁹

The telecommunications utilities respond to such common-sense observations with rote claims that any reporting and monitoring requirements would cause substantially increased expenses, ultimately borne by consumers. Such allegedly increased expenses are never substantiated. DRA’s experience has been that the utilities need detailed reporting for their own internal business purposes. To not require the basic disclosures at issue here essentially allows these utilities to operate in a black box, and is tantamount to an abdication of the Commission’s regulatory oversight.

In addition to the market failing to reasonably control prices, the Consumer Protection Initiative of D.06-03-013 has been insufficient in ensuring that consumers are provided with sufficient information upon which to make informed choices about telecommunications services as required by Public Utilities (P.U.) Code § 2896. Despite D.06-03-013’s intent to “ensure that consumers are educated and protected from fraud and bad actors,”¹⁰ in April of this year, the Commission found in D.08-04-057 that AT&T had failed to provide adequate disclosures to customers about the price of basic service. The Commission ordered AT&T to make additional customer disclosures in conversations between customer service representatives and consumers, as well as post information on its web site in accordance with Section 2896(a).¹¹ The

⁷ D.06-08-030, slip. op., at 262, FOF 16.

⁸ D.06-08-030, slip. op., *Commissioner Dian M. Grueneich, Concurrence Regarding Decision on the Assessment and Revision of the Regulation of Telecommunications Utilities*, at 3.

⁹ See DRA Comments on Phase 2 Issues (March 2, 2007) at 9-13.

¹⁰ PD at 30.

¹¹ PD at 29.

Commission held that, “pursuant to § 2896 it is the *carrier’s* obligation to provide a certain amount of information to the customer so that she or he may be able to make an informed choice among services, not the customer’s obligation to request it from the carrier.”¹² To prevent similar consumer protection failures in the future, the Commission should require that all carriers make those basic disclosures.

A. THE PD ERRS IN FAILING TO JUSTIFY THE COMMISSION’S CHANGE IN POLICY FROM VIGOROUS MONITORING OF THE VOICE COMMUNICATIONS MARKETPLACE TO A SPECULATIVE “WAIT AND SEE” APPROACH.

In the *Phase I URF decision*, the Commission adopted a policy “to remain vigilant in monitoring the voice communications marketplace to ensure that the market continues to serve California consumers well.”¹³ In contradiction to this policy, however, the PD finds that it is “best to wait and observe how the market develops before considering whether to impose state-specific reporting requirements... or to take other steps, such as the consumer surveys suggested by the ILECs, to obtain the necessary information.”¹⁴ Here, “observe” does not connote any specific data requirements, so the proposal is really a “wait and see” approach.

As reflected by the substantial price increases in various telecommunications services since the adoption of D.06-08-030, this speculative “wait and see” approach would commit the Commission to failure in carrying out California’s telecommunications policy “to promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.”¹⁵ Consequently, in following the PD’s approach, the Commission would be failing to proceed in a manner required by law.

This Commission need look no further than its broadband data collection for an example of more vigilant data collection. In its monitoring of the deployment of broadband availability in furtherance of its goals to promote advanced telecommunications services, the Commission’s emphasis has been on collecting detailed data, more granular than that required by FCC.¹⁶ The

¹² D.08-04-057, slip. op., at 37.

¹³ D.06-08-030, slip. op., at 268, FOF 73.

¹⁴ PD at 25.

¹⁵ Cal. Pub. Util. Code § 709(f).

¹⁶ See PD at 18-20; see also WC Docket 07-38, *Comments of the California Public Utilities Commission*

Commission's filing last week with the FCC on the development of broadband data shows that the Commission intends to rely upon FCC data only to *supplement*, and not replace, state-specific data.

The CPUC anticipates that any national mapping program the FCC undertakes would supplement, but not replace, the mapping programs undertaken by the states and various public-private partnerships. An FCC mapping program would support states' efforts to map state-specific data, allowing them to map other state resources along with broadband availability in order to support specific state initiatives. The FCC's broadband availability map would provide the base data upon which states could add layers of data of particular interest to state policymakers.¹⁷

The rationale behind the Commission's relative vigilance in the broadband marketplace is set forth in its comments. "The marketplace is moving quickly and in order to develop policies and programs to aid in the ubiquitous deployment of advanced services *we need to move just as quickly to ensure that any market failures can be addressed quickly and comprehensively.*"¹⁸ The Commission has an equally important obligation to promote California's long-standing policy to ensure "[t]he offering of high quality basic telephone service at affordable rates to the greatest number of citizens."¹⁹ The PD's complacent approach to monitoring here is inconsistent with this policy and the PD provides no reasonable explanation for a less robust approach in this instance.

1. The Uncertain Status of the ARMIS Reports and the ILECs' Forbearance Strategy: the Negative Impact on the Commission's Monitoring Abilities

The PD acknowledges that the ILECs have pending petitions before the FCC which request forbearance from the filing of certain FCC Automated Reporting Management Information Service ("ARMIS") reports, but provides a discussion only on AT&T's petition to

and of the People of the State of California on the Development of Broadband Data: Broadband Availability Mapping, filed July 17, 2008.

¹⁷ *Comments of the California Public Utilities Commission and of the People of the State of California on the Development of Broadband Data: Broadband Availability Mapping*, filed July 17, 2008, at 12, WC Docket 07-38.

¹⁸ *Id.* at 13.

¹⁹ Cal. Pub. Util. Code § 871.5(a).

forbear from its cost assignment reporting requirements.²⁰ While the cost assignment reporting from which the FCC granted AT&T forbearance likely contains data that would be used in the FCC's ARMIS reports, the more relevant petitions for forbearance before the FCC are the ones that the PD omits from its discussion. We provide below a description of AT&T's and Verizon's petitions and an analysis of how, if granted and the PD was adopted, the FCC's actions would result in an evisceration of this Commission's monitoring abilities.

To avoid further undermining of the Commission's reliance on the FCC ARMIS reports, the final decision in this proceeding should clarify that carriers shall file the ten ARMIS reports with the Commission regardless of the outcomes with the pending FCC petitions.²¹ In other words, even if ILECs are freed from the responsibility to provide data to the FCC, the ILECs would be required to report to the CPUC the same data that would have appeared on the California-relevant portion of their ARMIS reports (which would include national or regional data if there is no California-specific reporting on a particular item in the current ARMIS report).

ARMIS not sufficient: The ARMIS reports, which consist of ten public reports filed only by the ILECs with the FCC, while necessary, are not sufficient. ARMIS reports 43-05 and 43-06 address service quality and the remaining eight are mainly designed to gather financial and operating data.²² The ARMIS reports have significant limitations with regard to monitoring the voice communications marketplace in California. Those limitations were extensively discussed in previous comments filed in this proceeding by DRA.²³ For that reason and consistent with the Commission's stated intent to use FCC data only as a *supplement* to its own state-specific data, the Commission should also adopt the six additional monitoring reports proposed by DRA.²⁴

AT&T's Petition to Eliminate ARMIS reporting: A year after the Commission eliminated California-specific monitoring reports on the basis that it would rely largely on the ARMIS reports instead, AT&T went to the FCC to seek forbearance from ARMIS Reports 43-05 (Service Quality Report), 43-06 (Customer Satisfaction Report), 43-07 (Infrastructure Report)

²⁰ PD at 22.

²¹ Though we are not discussing the other "me too" petitions filed by Qwest, Embarq, and Frontier and Citizens, the problems presented by AT&T's and Verizon's petitions are applicable to them as well.

²² See DRA Comments on Phase 2 Issues (March 2, 2007) at 10.

²³ See *id.* at 7-13.

²⁴ See DRA Monitoring Proposal (February 2, 2007), Appendix A.

and 43-08 (Operating Data Report).²⁵ AT&T asserted that ARMIS reports 43-05 and 43-06 were not needed to protect consumers.²⁶ The CPUC disagreed. “Report 43-05 provides installation and repair interval data and Report 43-06 shows the percentage of customers dissatisfied with installation and repair based on the carrier’s customer survey.”²⁷ The CPUC informed the FCC that it has used the data in these reports in some of its enforcement actions.²⁸ AT&T next asserted that the FCC should eliminate ARMIS reports 43-07 and 43-08 and instead rely on Form 477. The CPUC again disagreed and pointed out that the “CPUC uses the infrastructure report data [from 43-07] to monitor carrier facilities and to study how they may be deployed over time.”²⁹ The CPUC also noted that it uses the 43-08 report including telephone call statistics to monitor and study calling pattern trends.³⁰

Verizon’s Petition to Eliminate ARMIS reporting: Following closely on the heels of AT&T’s forbearance petition, Verizon took forbearance a step further and petitioned to be relieved from all ARMIS reporting – the financial reports (Reports 43-01, 43-02, 43-03, 43-04, 495A and 495B); the service quality reports (Reports 43-05 and 43-06); and the infrastructure reports (Reports 43-07 and 43-08).³¹ In addition to the ARMIS reports, Verizon also sought forbearance from affiliate transaction rules promulgated to ensure that consumers of regulated services do not inappropriately subsidize non-regulated services.³² In their comments to the FCC, New Jersey and other parties highlighted the significant threat that Verizon’s petitions posed to state regulators and consumers:

²⁵ *In the matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission’s ARMIS Reporting Requirements*, WC Docket No. 07-139, Reply Comments of the California Public Utilities Commission and the People of the State of California, filed September 17, 2007, at 1.

²⁶ *Id.* at 4.

²⁷ *Id.*

²⁸ *Id.* at 4-5.

²⁹ *Id.* at 8.

³⁰ *Id.*

³¹ *In the matter of Petition of Verizon for Forbearance Under 47 U.S.C § 160(c) From Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements*, WC Docket No. 07-273, Joint Comments and Opposition of the New Jersey Division of Rate Counsel and the National Association of State Utility Consumer Advocates, filed February 1, 2008, at 11.

³² *Id.*

What is new here is that not only does Verizon seek forbearance in its Petition from *reporting* requirements, but also from *recordkeeping* requirements. Allowing Verizon to withdraw from its recordkeeping requirements could hamper the ability of consumer advocates and regulators to seek information in state and federal proceedings through data and information requests, and also could limit the usefulness of any future audits that state or federal regulators may undertake. If Verizon is no longer required to keep its records in a way that is amenable to data and audit requests, such requests in the future could be met with a response such as “no such data exist,” or “collecting such data would be unduly burdensome and would require a special study.”³³

Potentially more threatening to the CPUC’s regulatory monitoring abilities is Verizon’s request to have the FCC *preempt* state recordkeeping and reporting requirements.³⁴

As argued by state consumer advocates, “all of these petitions involve the ILECs’ consistent overestimation of the extent of competition in their markets, and equally consistent underestimation of the public interest in the regulations from which the Petitioners seek forbearance.”³⁵ Moreover, the arguments set forth by opponents of the forbearance petitions, including this Commission, demonstrate that ARMIS data is particularly important, especially for the protection of basic service since the market has failed to produce the intended benefits for consumers. The ILECs’ forbearance petitions belie any ILEC commitment “to work with state commissions...to address state needs”³⁶ and the PD’s apparent lack of consideration of the negative consequences of all of the ILEC forbearance petitions was arbitrary and capricious. Therefore, Commission adoption of the PD would be an abuse of discretion.

2. The Commission Would Not Have the Ability to Adequately Monitor the Voice Communications Marketplace Without Data on Competition, Service Affordability, and Service Availability.

The CPUC has a statutory duty to ensure that utilities under its jurisdiction provide service at reasonable rates. Public Utilities (P.U.) Code Section 451 states in part:

³³ *Id.* at 6-7.

³⁴ *Id.* at 7, *citing* Verizon’s Petition at 5.

³⁵ *Id.* at 4.

³⁶ PD at 23.

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

The PD's elimination of the two primary tools that enable the Commission to make this determination is an abrogation of statutory responsibility. Those reports are the Summary of Category (Cat) II Rate Changes and the Affordability Studies. Admittedly, the Commission has eliminated the NRF structure that placed services in Categories I, II and III. Hence, a report summarizing "Category II" rate changes would not have any literal meaning. But, many services formerly in Category II (with price caps) and on which residential customers have grown to depend are now both price-deregulated and detariffed. Rates for nearly all of those former Cat II services have increased. Tracking prices for these services is also important because the Commission has allowed the utilities to bundle Category II and III services with basic service, so any subsequent increase on the "optional" services will directly impact the cost of basic service for bundled customers.

Consequently, the Commission should monitor rate changes for services that are included in the typical customer bill (*i.e.*, services to which a simple majority of residential and/or small business customers subscribe) to ensure that phone service is reasonably priced. Without a summary of these important rate changes it would be nearly impossible for the Commission or its staff to monitor these changes given the multitude of other rate changes for those services that could occur. Without data on rate changes for key residential and small business services, the Commission is ignoring its statutory duty to ensure that rates are reasonable pursuant to P.U. Code § 451.

The PD also proposes to eliminate the Affordability Study heretofore conducted by Field Research. This study gives the Commission valuable information from the customer's point of view on whether rates are reasonable pursuant to Section 451, including data by demographic and ILEC-territory-specific breakdowns not available through FCC reporting on universal service and rates. Thus, rather than eliminate the Affordability Study, the Commission should fine-tune and *expand* that study, as DRA recommended and is discussed below.

3. DRA's Recommendations

In both Opening and Reply comments on monitoring issues, DRA proposed six additional monitoring reports (five new reports and one modified NRF report).³⁷ DRA continues to believe that these proposed reports provide important information to “ensure, to the extent practical, that every person and business in California has access to modern, affordable, and high quality telecommunications services”³⁸ D.06-08-030 stated as a goal that universal service is protected “via the continued affordability and widespread availability of high-quality telecommunications services to all Californians.”³⁹ DRA's recommended reports would allow the Commission to determine if it is on track to meet this goal. By the apparent lack of weight that the PD gives to DRA's recommended reports, it appears to ignore the Commission's previously stated goals.

As discussed earlier, the Commission must honor its duties under the P.U. Code to assess the reasonableness of rates and affordability of service. In lieu of the eliminated Summary of Cat II Rate Changes the Commission should require a report called "Summary of Rate Changes" that would permit Commission staff to efficiently and quickly identify rate changes that impact residential customers and small businesses.

The Commission should also retain the Field Research Affordability Study, with the modifications that DRA proposed. If this study is eliminated, then at a minimum, the Commission should adopt and track other measures of affordability, such as the number of customers terminated for lack of payment.

B. THE PD ERRS BY FAILING TO PROVIDE ANY RATIONAL COST BASIS FOR REJECTING BOTH DRA AND TURN'S PROPOSED REPORTING REQUIREMENTS.

The PD wholly dismisses as “not justified in light of the costs” the limited reporting requirements proposed by DRA and TURN.⁴⁰ The PD, however, fails to corroborate its finding with any citations to record evidence of any real or allegedly burdensome costs associated with

³⁷ See DRA Monitoring Proposal (February 2, 2007). The reports proposed are on service availability, affordability, and competition.

³⁸ R.05-04-005 at 3.

³⁹ D.06-08-030 at 31.

⁴⁰ PD at 17.

DRA's and TURN's proposals.⁴¹ The PD also fails to provide any discussion on the cost analysis it conducted to determine how those unspecified, alleged "costs" outweigh the numerous benefits of monitoring reports outlined by DRA during the workshops and in its previously filed comments.⁴² DRA provided this information specifically to respond to the Assigned Commissioner's Ruling (December 21, 2006) requesting the "costs and benefits of additional reporting requirement proposals."⁴³ The PD ignores this record evidence.

Moreover, no party critical of DRA's (and TURN's) proposals provided any objective evidence or could even articulate with specificity exactly what costs would result from either proposals.⁴⁴ In substance, objectors like Verizon, SureWest, CalTel, Cox, and the Joint Wireless Carriers proffered nothing more than unsupported assertions and speculation.⁴⁵ In contrast, DRA offered the most specific data available on the record about the costs of its proposals and the likely benefits.⁴⁶

In the LEP proceeding, R.07-01-021, referenced in the PD's Finding of Fact ("FOF") 11, the Commission stated that it "cannot rely on carriers assertions that in-language support is adequate and no additional protection of LEP consumers is needed" since there was little data the Commission could identify that might show that the carriers were meeting the needs of their LEP consumers.⁴⁷ Similarly, the Commission cannot rely upon carriers' rote assertions that overly burdensome costs would outweigh the benefits of state-specific monitoring reports because (1) no actual, overly burdensome "cost" evidence can be found in the record, and (2) the PD failed to provide any cost-benefit analysis that a reviewing court could rely upon to determine that either DRA's or TURN's proposals were unjustified.

⁴¹ PD at 17.

⁴² See DRA Opening Comments (March 2, 2007) and DRA Reply Comments (March 30, 2007).

⁴³ See ACR (December 21, 2006) at 6.

⁴⁴ See DRA Reply Comments on Phase 2 Issues (March 30, 2007) at 4-9.

⁴⁵ *Id.*

⁴⁶ See DRA Opening Comments (March 2, 2007) and DRA Reply Comments (March 30, 2007).

⁴⁷ *Decision Addressing the Needs of the Telecommunications Consumers Who Have Limited English Proficiency*, D.07-07-043 at 32 (July 26, 2007).

The PD also fails to take into account that DRA seeks only six monitoring reports as opposed to the over ninety reports required of the ILECs under NRF.⁴⁸ The reduction in costs to those carriers is significant⁴⁹ and refutes any assertion by carriers that DRA's six monitoring reports would be too costly. In addition to failing to substantiate exactly what it would cost to implement DRA's monitoring proposal, none of the carriers offered evidence to disprove that the data collected in DRA's proposed reports would be different from the information that is already collected by carriers for their own business purposes.⁵⁰ Consequently, the PD's finding that DRA's monitoring proposal is unjustified due to cost is not supported by substantial evidence in light of the whole record. In turn, the PD is not supported by correct findings.⁵¹

C. THE PD ERRS BY IMPLYING THAT THE CPUC LACKS AUTHORITY TO DEMAND INFORMATION ABOUT VOIP SERVICES.

According to the PD, information about the various service providers and services that are offered in a given area within the state would be useful to consumers.⁵² Nevertheless, the PD does not require that this information must be submitted to the Commission by service providers. The PD asserts that "[t]he Commission cannot demand this information from providers outside of its jurisdiction" and provides an example of this jurisdictional limitation in accompanying footnote 42, stating "[f]or example, the Commission has declined to regulate VoIP at this time (*See* D.06-06-010)."⁵³ Taken together, these statements erroneously imply that the Commission does not have jurisdiction over VoIP providers, especially over obtaining information about their services.

This is simply not the case. This Commission has plenary power, under California Government Code sections 11180 *et seq.*, *inter alia*, to investigate any matter relative to its jurisdiction, even where specific jurisdiction to regulate or enforce might be preempted by Federal law.⁵⁴ DRA submits that the Commission abuses its discretion when it simply decides to

⁴⁸ *See* DRA Reply Comments on Phase 2 Issues (March 30, 2007) at 7-9.

⁴⁹ *Id.* At 8.

⁵⁰ *Id.* at 6.

⁵¹ Cal. Pub. Util. § 1757.1(a)(4).

⁵² PD at 20.

⁵³ PD at 21.

⁵⁴ *See, e.g., Younger v. Jensen* (1980) 26 C.3d 397, 404-406; *see also* Public Utils. Code § 701

forego its regulatory obligations. Therefore, the Commission should delete footnote 42 to avoid any potentially erroneous implications.

D. ADDITIONAL CUSTOMER DISCLOSURE RULES

The PD points to the “extensive actions” the Commission has taken pursuant to D.06-03-013 – the Consumer Protection Initiative or CPI decision – as proof that it is not necessary to adopt additional customer disclosure rules after the elimination of California specific monitoring reports. The CPI decision gave consumers the following disclosure “rules”:

Disclosure:

- Consumers have a right to receive clear and complete information about all material terms and conditions, such as material limitations, for i) products and service plans they select or ii) available products and service plans for which they request information.
- Consumers have a right to be charged only according to the rates, terms and conditions they have agreed to, as set forth in service agreements or carrier tariffs governing services ordered.⁵⁵

These rules identify what customers “have a right to” but do not provide any rules that carriers must follow in disclosing information to customers. Operating under these rules AT&T believed it was proper to “...offer a bundle of services as a first recommendation to a customer interested in new telephone service.”⁵⁶ AT&T’s interpretation of this CPI rule also led the company to believe that it did not need to explain, unless requested by the customer, the difference between flat and measured rate service and the prices for those services.⁵⁷ This view was rejected by D.08-04-057; indeed the PD seems to indicate that D.08-04-057 illustrates that the Commission will continue to enforce disclosure requirements as required to protect consumers. While D.08-04-057 indicates that the Commission will enforce some minimal disclosure rules as to AT&T, DRA believes those rules should apply across the industry. It is a matter of simple fairness to require all carriers to disclose the price for basic service before they go on to offer bundles. Moreover, enforcing those rules on an ex post facto, case-by-case basis

(Commission “may do all things ... necessary and convenient in the exercise of [its] power and jurisdiction”).

⁵⁵ D.06-03-013, A-3.

⁵⁶ D.08-04-057, FOF 12.

⁵⁷ Ibid. FOF 20.

against carriers who fail to provide fundamental disclosures, like prices for basic service, would result in a waste of Commission time and parties' resources.

The most efficient solution would be to adopt the simple customer disclosure rules recommended in DRA's March 2007 Opening and Reply Comments in this proceeding. The Commission should adopt specific disclosures, such as those now required of AT&T, so that the state does not have a patchwork of disclosure requirements applicable to different service providers.

Moreover, in its effort to avoid burdening service providers, the PD appears to expect regulators to provide the type of information and disclosures that the carriers possess and should make available to customers. The PD cites the calphoneinfo.com website as one of the "extensive actions" the Commission has taken in the CPI decision to help consumers. In truth this website lacks detailed information about specific carriers to be useful.⁵⁸ The carriers should ultimately be responsible for giving customers proper disclosures about their services, not the Commission.

The PD also fails to provide a rational basis for concluding that the comprehensive consumer protection regime in D.06-03-013 is sufficient; the Commission has not successfully implemented all of the initiatives and has no basis to guarantee the program's effectiveness in protecting consumers. Of most relevance to this proceeding is the highly anticipated Consumer Information Management System (CIMS) database that is intended to significantly improve the Commission's complaint gathering ability. The PD asserts that the Commission "improved its consumer complaint resolution database,"⁵⁹ but in fact the rollout of that database has been delayed.⁶⁰ More than two years since the adoption of the *CPI decision*, the new database has yet to be used and therefore its effectiveness is unknown.

Additionally, the CIMS database could never deliver the level of complaint data sufficient for the Commission to monitor failures in the market because the majority of customers will always complain to their carriers first. The Commission's own "first contact"

⁵⁸ DRA Comments on Phase 2 Issues (March 2, 2007) at 24.

⁵⁹ PD at 30.

⁶⁰ According to the CPUC CIMS Project Presentation to California Utilities on April 7th, 2008, product sign-off/maintenance starts July 1st. <http://www.cpuc.ca.gov/NR/rdonlyres/555B4212-A3F0-4887-9497-2EEC8929220B/0/CIMSIndustryPreso040708.ppt#279,5,Timeline>

policy for complaint intakes produces this result, as the Commission will not log a customer's complaint unless that customer has first contacted her carrier to attempt to resolve the complaint. For these reasons, the PD's reliance on the CPI initiatives is misplaced and does not support the PD's finding that no new customer disclosure requirements should be established.

III. CONCLUSION

For all of the reasons stated herein, DRA respectfully requests that the Commission modify the PD to eliminate the factual and legal errors identified and adopt DRA's recommendations.

July 21, 2008

Respectfully submitted,

/s/ HIEN C. VO

HIEN C. VO

Attorney for
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-3651
Fax: (415) 703-4465
Email: hcv@cpuc.ca.gov

APPENDIX A

FINDINGS OF FACT:

1. All interstate carriers currently file multiple reports with the Federal Communications Commission including ARMIS reports.
2. In Phase I of this proceeding, the Commission determined that most reports previously filed by carriers subject to state regulation, including so-called NRF-specific reports, were no longer necessary to the Commission's discharge of its statutory duties in a competitive market.
3. The Commission is able to obtain timely information about changes in the pricing of tariffed services from advice letters filed by carriers.
4. The Commission is able to obtain timely information about the nature and price of detariffed services from carrier-specific price lists posted on carriers' websites, as required by our detariffing rules.
5. The Commission will not be able to obtain information about the status of competition through the carriers' filings of FCC ARMIS and non-ARMIS Reports.
6. The Commission will obtain detailed information about broadband subscription through the DIVCA Reports as well as through reports filed with the FCC.
7. Because ~~the~~ FCC has opened dockets to consider petitions from incumbent local exchange carriers requesting forbearance from the requirement of filing one or more ARMIS reports the Commission is at risk of losing critical data contained in the ARMIS reports that the Commission uses to carry out its regulatory duties.
8. The Commission has opposed the forbearance petitions in comments filed with the FCC.
9. The FCC is reviewing the issue of interstate special access in WC Docket No. 05-25, RM-10593.
10. ~~The Commission adopted a comprehensive consumer protection regime in D.06-03-013.~~

11. The Commission established additional consumer protection rules in its LEP proceeding R.07-01-021.
12. ~~The Commission is considering additional consumer protection rules in its cramming docket R.00-02-004.~~
13. The Commission enforced § 2896(a) of the Pub .Util. Code by requiring additional consumer protection disclosures only regarding basic rates for telephone service in a specific case.

CONCLUSIONS OF LAW

1. ARMIS and other reports filed with the FCC, together with data gathered by Commission staff and advice letters that continue to be filed with the Commission, do not provide adequate information for the Commission to meet its statutory obligations and exercise effective regulatory oversight.
2. ~~No~~ The six additional monitoring reports proposed by DRA should be required of URF Carriers at this time.
3. The Commission should not deregulate retail special access at this time.
4. ~~No additional consumer protection disclosures are required at this time.~~

ORDER:

1. ~~No~~ The six additional monitoring reports proposed by DRA are required of any carrier subject to Commission jurisdiction at this time.
2. There are no changes in the Commission's pricing regulations for retail special access services at this time.
3. ~~No~~ additional consumer protection disclosures are required at this times.
4. ~~Rulemaking 05-04-005 is closed.~~

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PROPOSED DECISION REGARDING MONITORING REPORTS, RETAIL SPECIAL ACCESS PRICING AND CUSTOMER DISCLOSURE RULES**” in **R.05-04-005** by using the following service:

☒ E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

☐ U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses, if any.

☒ By Hand: On assigned Administrative Law Judge and Assigned Commissioner.

Executed on the 21st day of July 2008, at San Francisco, California.

/s/ Nelly Sarmiento

Nelly Sarmiento

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

SERVICE LIST

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hgildea@snavely-king.com
dlee@snavely-king.com
Terrance.Spann@hqda.army.mil
ksaville@czn.com
mbrosch@utilitech.net
ann.johnson@verizon.com
robbie.ralph@shell.com
rex.knowles@xo.com
ed.giesecking@swgas.com
valerie.ontiveroz@swgas.com
jbloom@winston.com
rdiprimio@valencia.com
don.eachus@verizon.com
jesus.g.roman@verizon.com
michael.backstrom@sce.com
rtanner@scwater.com
esther.northrup@cox.com
pszymanski@sempra.com
DitoP@kindermorgan.com
mmulkey@arrival.com
elara@centrolafamilia.org
cmailoux@turn.org
Diane_Fellman@fpl.com
elaine.duncan@verizon.com
mflorio@turn.org
rcosta@turn.org
rudym.reyes@verizon.com
thomas.long@sfgov.org
bnusbaum@turn.org
wit@cpuc.ca.gov
lgx@cpuc.ca.gov
ndw@cpuc.ca.gov
sjy@cpuc.ca.gov
tad@cpuc.ca.gov
heidi_sieck-williamson@ci.sf.ca.us
steve.bowen@bowenlawgroup.com
ahk4@pge.com
david.discher@att.com
fassil.t.fenikile@att.com
gregory.castle@att.com
gj7927@att.com
jadine.louie@att.com
jy2378@att.com
jpc2@pge.com
Kristin.L.Jacobson@sprint.com
mwand@mofo.com
michael.sasser@att.com

nedya.campbell@att.com
nelsonya.causby@att.com
ppham@mofo.com
stephen.h.kukta@sprint.com
thomas.selhorst@att.com
marg@tobiaslo.com
ashm@telepacific.com
pcasciato@sbcglobal.net
adl@lrolaw.com
ckomail@pacbell.net
david@simpsonpartners.com
gblack@cwclaw.com
enriqueg@lif.org
jsqueri@goodinmacbride.com
jarmstrong@goodinmacbride.com
smalllecs@cwclaw.com
jwiedman@goodinmacbride.com
mschreiber@cwclaw.com
mday@goodinmacbride.com
smalllecs@cwclaw.com
deyoung@caltel.org
sleeper@manatt.com
tmacbride@goodinmacbride.com
mmattes@nossaman.com
edwardoneill@dwt.com
suzannetoller@dwt.com
ens@loens.com
tlmurray@earthlink.net

bgranger@pacbell.mobile.com

putzi@strangelaw.net
strange@strangelaw.net
mgomez1@bart.gov
douglas.garrett@cox.com
grs@calcable.org
ll@calcable.org
mp@calcable.org
rschmidt@bartlewells.com
robertg@greenlining.org
thaliag@greenlining.org
pucservice@dralegal.org
pucservice@dralegal.org
jim@tobinlaw.us
palle_jensen@sjwater.com

cratty@comcast.net

cborn@czn.com
jchicoi@czn.com
ggierczak@surewest.com
abb@eslawfirm.com
chris@cuwcc.org
kdavis@o1.com
sheila@wma.org
tom@ucons.com
gregkopta@dwt.com
aisar@millerisar.com
Mike.Romano@Level3.com
kelly.faul@xo.com
william.weber@cbeyond.net
fpc_ca@pacbell.net
jcovey@mayerbrown.com
kgibney@mayerbrown.com
katherine.mudge@covad.com
jeff.wirtzfeld@qwest.com
Marjorie.Herlth@Qwest.com
npedersen@hanmor.com
jacque.lopez@verizon.com
douglass@energyattorney.com
case.admin@sce.com
atrial@sempa.com
mshames@ucan.org
clower@earthlink.net
slafond@ci.riverside.ca.us
don@uutlaw.com
anna.kapetanakos@att.com
joe.carrisalez@att.com
marklegal@sbcglobal.net
vvasquez@pacificresearch.org
judypau@dwt.com
katienelson@dwt.com
ahammond@scu.edu
lex@consumercal.org
lex@consumercal.org
ralf1241a@cs.com
la5173@att.com
john_gutierrez@cable.comcast.com
anitataffrice@earthlink.net
lmb@wblaw.net
sbergum@ddtp.org
tguster@greatoakswater.com
rl@comrl.com
ahanson@o1.com
blaising@braunlegal.com
Adam.Sherr@qwest.com
drp@cpuc.ca.gov
chc@cpuc.ca.gov

chr@cpuc.ca.gov
dgp@cpuc.ca.gov
des@cpuc.ca.gov
man@cpuc.ca.gov
dlf@cpuc.ca.gov
fnl@cpuc.ca.gov
flc@cpuc.ca.gov
hmm@cpuc.ca.gov
hcv@cpuc.ca.gov
jar@cpuc.ca.gov
jjs@cpuc.ca.gov
jjw@cpuc.ca.gov
jst@cpuc.ca.gov
jet@cpuc.ca.gov
kar@cpuc.ca.gov
kjb@cpuc.ca.gov
lwt@cpuc.ca.gov
mca@cpuc.ca.gov
mki@cpuc.ca.gov
nxb@cpuc.ca.gov
pje@cpuc.ca.gov
rff@cpuc.ca.gov
rs1@cpuc.ca.gov
rmp@cpuc.ca.gov
hey@cpuc.ca.gov
kot@cpuc.ca.gov
skw@cpuc.ca.gov
tjs@cpuc.ca.gov
wej@cpuc.ca.gov
randy.chinn@sen.ca.gov